

March 1, 1939

Honorable W. Lee O'Daniel  
Governor of the State of Texas  
Austin, Texas

Dear Governor O'Daniel:

Opinion No. 0-351  
Re: H.B. No. 209 held invalid  
because of insufficiency of  
its caption

This is in answer to your letter of February 14, 1939,  
which reads as follows:

"I am referring to you H.B. No. 209, re-  
lating to common school districts, and desire  
to ask the following questions:

"In the caption of this Bill its provis-  
ions are restricted to certain school districts  
while the Bill itself seems more general and,  
it appears to me, may apply to all school dis-  
tricts.

"Will you please advise me whether or not  
the caption is sufficient to limit the provis-  
ions of the Bill to the specific school dis-  
tricts therein described."

You attached to this letter a copy of H.B. No. 209.  
That part of the caption of the Bill in which we are interested  
reads as follows:

"AN ACT to validate, ratify, approve, con-  
firm and declare enforceable all levies and as-  
sessments of ad valorem taxes heretofore made by  
county line independent school districts, part-  
ly situated in three or more counties, the super-  
vision of said school being located in counties  
having a population not less than 17,000 nor more  
than 17,500.\* \* \*

However, the body of the Bill applies to all independent school districts in counties having a population of from 17,000 to 17,500, and does not limit its application to county line independent school districts as defined in the caption. That part of the body of the Bill with which we are concerned reads as follows:

"That all levies and assessments of ad valorem taxes heretofore made by the governing body of any independent school district in this State, in counties having a population of not less than seventeen thousand (17,000) and not more than seventeen thousand five hundred (17,500), according to the last preceding Federal Census, not in excess of the limit now provided by law, which are void or unenforceable because such levies were made and adopted by resolution, motion or other informal action, instead of having been made by order, as required by the Statutes of this State; \* \* \* Are each and all hereby validated, ratified, approved, confirmed, and declared enforceable, \* \* \*"

Whether or not this caption is sufficient is governed by Article III, Section 35, of the Constitution of Texas, which reads as follows:

"No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed."

The attitude of the courts of this State in regard to Bills providing for more than is expressed in the caption is well stated in the case of *Ex parte Heartsill* (Tex. Crim. App.) 38 S.W. (2d) 803, as follows:

"All laws passed by the Legislature of this state originate in bills, upon each of which must appear a caption or title, and section 35, art. 3, of our Constitution forbids that any bill, with certain exceptions, shall contain more than one subject, which shall be expressed in its title. It has been held by the courts that when the express verbiage of such title limits and restricts the

purpose of the bill, any attempt to legislate otherwise in such bill variant from the purpose prescribed, is in excess of the legislative power, and that a law subject to this complaint is unconstitutional."

The purpose of this constitutional provision is expressed in 39 Tex. Jur. 77, as follows:

"It is intended to secure notice to the legislators and the people, through such publication of legislative proceedings as is usually made, of the subject, nature or contents of each particular bill, thus avoiding deception, misapprehension and surprise in legislation and giving those who are interested in a subject under consideration an opportunity to be heard thereon, if they so desire."

The Bill we have under consideration applies to all school districts of this size, but the caption limits the bill to county line districts. The caption would not, at the time the bill was pending in the Legislature, have given notice "to the legislators and the people \* \* \* of the \* \* \* contents" of the Bill, or given those who were interested "an opportunity to be heard thereon", because those who lived in school districts that were not on county lines could not tell by reading the caption that the Bill applied to their districts.

In the cases of Ciddings vs. San Antonio, 47 Tex. 548; Adams vs. San Angelo Water Works Co., 86 Tex. 486, 25 S.W. 605; and Archey vs. State, 123 Tex. Crim. App. 458, 59 S.W. (2d) 406, as well as in some other cases, the caption of the act involved was not sufficient to cover the entire body of the bill, and the court held that the bill was void only as to that part not embraced in the caption; but in those cases the part not embraced in the caption was in separate sections and paragraphs, and, as said in the Archey case, it was "easily separable from the other matters and things named in the title", and when it was stricken out the bill was still complete and intelligible.

In the bill we have under consideration, the part not covered by the caption is not "easily separable from the other matters and things named in the title". In fact, it would be impossible to strike out that part of the bill applying to districts not on county lines and leave a bill that only applied to county line districts. Therefore, the entire act will have to be held void for the reasons stated in 25 R.C.L. 840, as follows:

"If an act is broader than its title and the subject or objects not covered by the title are so intimately connected with the one indicated by the title that the portion of the act relating to them cannot be rejected and leave a complete and sensible enactment which is capable of being executed, the entire act must be held invalid; \* \* \*

The bill that we have under consideration is similar to the one that was considered in the case of Sutherland vs. Board of Trustees (Tex. Ct. Civ. App.) 261 S.W. 489. In that case the body of the bill created a new school district, including parts of the Agua Dulce district and the Number 4 district, but the caption of the bill, which attempted to describe the territory covered by the new district, did not include the Agua Dulce and Number 4 parts, and the court refused to allow the rest of the district to stand, and said:

"We conclude that tested by this rule no part of the act is enforceable for any purpose, after the provisions incorporating parts of Agua Dulce and No. 4 districts into the proposed districts are excluded, as they must be."

In the case of Texas-Louisiana Power Co. vs. City of Farmersville (Tex. Comm. App.) 67 S.W. (2d) 235, in an opinion by Judge Sharp, it was held that an act which increased the number of cities with the right to regulate utility rates, and also changed the scale of rates that could be charged, was invalid in its entirety because the caption did not refer to the changed scale of rates, and the court held that the provisions of the act were so interwoven that it could not let the other parts of the act stand; and in this connection it said:

"The established rule applicable here as reflected by the decisions of the various courts is correctly stated in Lewis' Sutherland, Statutory Construction (2d Ed.) vol. 1, sec. 306, as follows: 'If, by striking out a void exception, proviso or other restrictive clause, the remainder, by reason of its generality, will have a broader scope as to subject or territory, its operation is not in accord with the legislative intent, and the whole would be affected and made void by the invalidity of such part'".

Our answer to your questions is that it is our opinion that because of the insufficiency of its caption this Bill you have

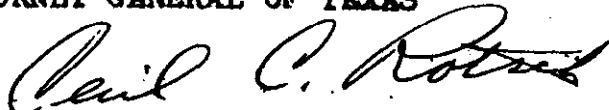
Governor W. Lee O'Daniel, March 1, 1939, Page 5

referred to us, H.B. No. 209, is entirely void and invalid.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



Cecil C. Rotsch  
Assistant

CCR:FG

APPROVED:



ATTORNEY GENERAL OF TEXAS

OK  
GRL